

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for
Approval of Indirect Transfer of Control of
Qwest Operating Companies to
CenturyLink

**ORDER REGARDING JOINT
PETITIONERS' MOTION FOR
RECONSIDERATION**

On September 22, 2010, the Joint Petitioners filed a Motion for the Administrative Law Judge to Reconsider the September 21, 2010 Order on a Limited Basis or, in the Alternative, to Certify the Motion for a Supplemental Protective Order to the MPUC and a Request for a Stay. On September 27, 2010; Integra Telecom, Sprint, and T-Mobile filed responses in opposition to the Motion to Reconsider or Certify.

On September 28, 2010, the Administrative Law Judge ordered that the limited number of documents at issue in the Motion to Reconsider or Certify be submitted for *in camera* inspection in connection with consideration of the Joint Petitioners' Motion. The Joint Petitioners submitted the documents to the Office of Administrative Hearings late on September 28, 2010.

Based upon the *in camera* inspection and the files, records, and proceedings in this matter, and for the reasons set forth in the Memorandum below, **IT IS HEREBY ORDERED** as follows:

1. The Joint Petitioners' Motion to Reconsider the September 21, 2010, Order on a Limited Basis is **GRANTED IN PART AND DENIED IN PART**, as discussed more fully in the Memorandum below.

2. The Joint Petitioners shall provide the information at issue in this Order to the appropriate parties by 4:30 p.m. on Friday, October 1, 2010 (assuming that recipients have executed Appendix D of the attached Second Supplemental Protective Order by that time).

3. The information produced in response to this Ruling shall be governed by the Protective Order previously entered in this case on June 15, 2010, the Supplemental Protective Order entered on September 21, 2010, and the Second Supplemental Protective Order attached hereto, as appropriate. **The Joint Petitioners**

shall not be required to automatically provide information responsive to this Ruling to all parties.

4. The eFiling of any document subject to this Order shall be conducted in the manner specified in the Fourth Prehearing Order issued by the Administrative Law Judge on September 24, 2010. The parties should also note:

- The service list in Docket 10-1012 will be limited to State Agency staff and outside counsel.
- The service list in Docket 10-1012 will provide access for outside counsel who have executed both Exhibit C to the Supplemental Protective Order issued on September 21, 2010 (for those documents containing “Highly Sensitive Trade Secret Information Subject to Additional Protection”), and Exhibit D to the Second Supplemental Protective Order that is being issued along with this Order on September 30, 2010 (for those documents discussed in this Order containing “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order”).
- The designated outside expert and in-house employee seeking access to the documents identified in the Second Supplemental Protective Order must execute and file Exhibit D.
- Access by outside expert(s) and in-house employee(s) to documents containing “Highly Sensitive Trade Secret Information Subject to Additional Protection” and “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” shall be solely through counsel, and counsel must ensure that both “Highly Sensitive Trade Secret Information Subject to Additional Protection” under the September 21, 2010, Supplemental Protective Order, and “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” issued in connection with this Order are made available only to those persons who have executed and filed Exhibit C and, where applicable, Exhibit D.

Date: September 30, 2010

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

In their Motion to Reconsider or Certify, the Joint Petitioners contend that the September 21, 2010, Order issued by the Administrative Law Judge fails to adequately protect a limited number of “extraordinarily sensitive” documents, and seek to have those documents disclosed only to outside counsel and outside experts of the private Intervenor. The documents (or portions of documents) at issue in the Motion are the following:

Data	Date	Title	Description
HSR #4	3/10/2010	Feb. 2010 Customer Profile and Churn Trends	Pages 9-11 of report containing retail customer data broken down by customer segment with churn data provided by product purchased, and discussing marketing and retention strategies as well as trending data for active Qwest customers
HSR #10	3/26/2010	Due Diligence Response No. 8	Document provided to Qwest during due diligence process regarding CenturyLink's broadband market share, penetration rates and go-to-market strategy for driving broadband penetration vs. the cable operator
HSR #13	4/1/2010	Wholesale Overview	Pages 7-9 of presentation containing carrier proprietary information and other data regarding marketing plans, product development, pending sales, and trends in the Wholesale marketplace
HSR #15	4/1/2010	2010-2013 Long Range Plan Review	Pages 8, 10, 13-18, 20-21, 23, 30, 35, and 42-47 of analysis of CenturyLink's Long Range Plan containing data regarding marketing plans, product development, and trends in the Consumer, Mass Markets, IPTV, Enterprise, and Wholesale markets

HSR #16	3/23/2010	Operations Review	14 pages ¹ of the presentation containing data regarding CenturyLink's operating models and marketing plans in the Consumer, Mass Market, and Enterprise markets; market launch data is included in the presentation for upcoming product rollouts.
HSR #23	4/15/2010	IPTV Quartz Review Sensitivities	Presentation containing data relating to the financial assumptions and projected market rollout of IPTV in various markets
HSR #33	4/21/2010	11 Markets Research Presentation	Market research survey commissioned by CenturyLink containing market data research regarding potential product offerings and customer preferences in various markets
HSR #35	4/1/2010	Due Diligence Response No. 150	Document provided to Qwest during due diligence process containing market projections and financial data regarding IPTV offering.
HSR #36	Undated	Consumer Sales Approach	Presentation containing go-to-market plans and information regarding CenturyTel's consumer sales strategy
Electronic version of spread-sheets		Attachment CWA-4 Highly Confidential.xls	Fully enabled copies of computer spreadsheet models projecting future operating and financial prospects for the combined firms (requested in CWA Information Request No. 4)

Prior to entry of the September 21, 2010, Order, the Joint Petitioners had argued that these and other documents and others should be designated "staff eyes only" and disclosed only to Department of Commerce and Commission staff, upon request. In their Motion to Reconsider or Certify, the Joint Petitioners indicated that they had reviewed all of the documents for which they had requested the most sensitive treatment after the September 21 Order was issued and substantially narrowed the documents and information subject to dispute. They stated that they had produced,

¹ The pages of the presentation are not numbered. Joint Petitioners seek to redact three pages of the Consumer and Mass Market Overview, nine pages of the IPTV and MDU Overview; and two pages of the Enterprise Overview.

pursuant to the September 21 Order, all of the documents that were listed in Attachment 1 to their original Motion for a Supplemental Protective Order and seven of the documents that were listed in Attachment 2. However, in the Motion to Reconsider or Certify, the Joint Petitioners contend that the documents identified above “remain too extraordinarily sensitive” to release under the terms of the Supplemental Protective Order that was issued on September 21.² They maintain that the “potential harm to the Joint Petitioner’s ability to fairly compete in the competitive marketplace if this information is disclosed to its competitors simply remains too high, particularly in balance with the Intervener’s limited interests to this discrete information in this proceeding.”³

In opposing the Joint Petitioners’ Motion, Integra contended that the Joint Applicants have not set forth any new reason why the September 21, 2010, Order should be reconsidered, and asserted that they have not adequately explained why they initially proposed that the documents at issue here be designated “staff eyes only” and are now suggesting a less restrictive approach. In addition, Integra argued that the current proposal to limit disclosure of these documents to outside counsel and outside experts would inappropriately limit the ability of its outside counsel to consult with his client. Sprint and T-Mobile emphasized that the only witness they are using to present their case is a Sprint in-house regulatory specialist, and maintained that the proposed restriction to outside counsel and outside witnesses of private parties would prevent Sprint and T-Mobile from fully presenting their position on issues in this proceeding. They also contended that the approach suggested by the Joint Petitioners is at odds with Commission practice and with the Commission’s directive that a full evidentiary record should be developed based on the input of all parties. Counsel for the Communication Workers of America (CWA) stated during the telephone conference call on September 23, 2010, and during the motion argument on September 8, 2010, that disclosure of the fully-enabled spreadsheet to be provided in response to CWA Information Request No. 4 will, in any event, be restricted to CWA’s outside counsel and outside expert, and will not be shared with CWA’s in-house personnel.

After reviewing the arguments of the parties and conducting an *in camera* inspection of the documents at issue, the Administrative Law Judge is persuaded that some additional restrictions should be placed on the disclosure of these materials due to their inclusion of extremely sensitive competitive information relating to market research, marketing strategies, product development, operating models, sales approaches, and other matters. The CWA has agreed to limit disclosure of these materials to its outside counsel and outside expert. However, the other private Intervenor has opposed this restriction, and the Administrative Law Judge is not convinced that it is appropriate or reasonable to limit the review of this information solely to the outside counsel and outside experts of those parties. As noted in the September 21 Order, such an approach would prevent outside attorneys and outside experts from consulting with the party that retained them about what, if any, significance the information has in this proceeding, and would hinder their ability to effectively represent

² Motion to Reconsider or Certify at 3.

³ *Id.* at 4.

their clients. Moreover, it would interfere with the ability of the private party Intervenor to provide valuable input for the Commission's consideration. The Administrative Law Judge concludes that it is proper to permit some in-house disclosure of the materials to the Intervenor other than CWA, but more narrowly limit the number and role of the in-house personnel permitted to review the materials. It is further determined that these restrictions should apply both to large companies and small companies.

Accordingly, in order to strike an appropriate balance between the Intervenor's interests and the Joint Petitioners' concerns about the competitive sensitivity of these materials, the Administrative Law Judge has determined that it is appropriate to grant the Joint Petitioners' Motion to Reconsider in part and issue a separate protective order which will apply where appropriate to the documents identified above. Accordingly, a Second Supplemental Protective Order Applicable to HSR Documents 4, 10, 13, 15, 16, 23, 33, 35 and 36, and Fully-Enabled Computer Spreadsheet Sought by CWA-4 ("Second Supplemental Protective Order"), is attached hereto. The Second Supplemental Protective Order will govern the information contained in the documents identified above, which shall be designated as "Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order." The Second Supplemental Protective Order (1) requires that the CWA limit disclosure of these materials to its outside counsel and outside expert, in accordance with its agreement to do so; and (2) requires that the other Intervenor limit disclosure of these materials to a reasonable number of outside attorneys; one outside consultant; and one in-house employee who is not now involved, and will not for a period of two years involve himself or herself in strategic or competitive decision-making (including, but not limited to, the sale or marketing or pricing of products or services) with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Joint Petitioners. The latter modification ensures that one in-house representative of private Intervenor other than the CWA will be able to consult with the party's outside expert and outside attorneys while safeguarding the Joint Petitioners' interest in ensuring that the information is not widely disseminated or inappropriately used.⁴

B. L. N.

⁴ Because the Joint Petitioners' Motion for Reconsideration has been granted in part, there is no need to reach the further question of whether the Motion should be certified to the Commission.